

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO,  
BEFORE HONORABLE, DANIEL A. FLORES, JUDGE  
DEPARTMENT 9

THE PEOPLE OF THE STATE )  
OF CALIFORNIA, )  
Plaintiff, )  
vs. )  
WILLIE C. WILLIAMS )  
Defendant. )  
-----)

No. 15024098

Reporter's Transcript of Proceedings  
(Preliminary Examination)

December 3, 2015

APPEARANCES:

For the People:

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By: MARGARET BUITRAGO  
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For the Defendant:

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By: REBECCA YOUNG  
Deputy Public Defender

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**INDEX OF EXAMINATION**

<b>WITNESS</b>	<b>PAGE</b>
<b>RACHEL MURPHY</b>	
Direct Examination by Ms. Buitrago	3
Voir Dire Examination by Ms. Young	7
Direct Examination by Ms. Buitrago (Resumed)	14
Cross-examination by Ms. Young	18
Redirect Examination by Ms. Buitrago	18
Recross-examination by Ms. Young	53

**INDEX OF EXHIBITS**

<b>EXHIBIT</b>		<b>MARKED</b>	<b>ADMITTED</b>
Exhibit 1	Photo	16	
Exhibit 2	Photo	16	
Exhibit 3	Photo	16	
Exhibits 2 and 3 Withdrawn Page 18			
Exhibit 2	Envelope	43	
Exhibit 2A	Lab Results	43	
Exhibit 2B	Ziplock Bag	43	
Exhibit 2C	Oxycodone Pills	45	
Exhibit 2D	Morphine Pills	46	
Exhibit 2E	Xanax Pills	46	

DECEMBER 3, 2015

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Lines 14 and 15. The Williams matter.  
Appearances.

MS. BUITRAGO: Good morning, your Honor. District Attorney Margaret Buitrago on behalf of the People.

MS. YOUNG: Rebecca Young on behalf of Mr. Williams, who is present before the Court. He's in custody. Good morning.

THE COURT: Good morning, Counsel. Good morning, Mr. Williams.

THE DEFENDANT: Good morning.

THE COURT: This matter is on for preliminary hearing as the matter that appears at line 15. Are both sides ready to proceed?

MS. BUITRAGO: Yes, your Honor.

THE COURT: Any motions to deal with before you start aside from the motion to suppress evidence?

MS. BUITRAGO: The People are asking the defense to state the scope of the motion. Based on my understanding of the moving papers filed by the defense it appears that a motion pertains to the initial stop not the subsequent search. I understand that the search is whatever was seized may be fruitful but for the purposes of presenting evidence I'd like to clarify, in fact, that is the scope of the motion.

THE COURT: That is what I got from it. Ms. Young.

MS. YOUNG: Yes. There is -- I think the basis of

1 the Fourth Amendment challenge is that Officer Murphy lacked  
2 reasonable suspicion to detain after the initial consensual  
3 encounter was terminated and that any subsequent chase,  
4 search, choking and all of the things that followed were  
5 without reasonable suspicion and that the officer cannot  
6 detain on a reasonable suspicion. Maintain anything that is  
7 reasonable. And I do have --

8 THE COURT: Sorry. Ms. Young, can you put the  
9 microphone at your table, please? Okay. So that addresses  
10 the scope.

11 MS. YOUNG: So --

12 THE COURT: Can we move on to something else?

13 MS. YOUNG: Yeah. I mean, obviously, I am waiting  
14 to hear direct examination, and I do have some cases that are  
15 in response to the case provided by Ms. Cantrovis (phonetic)  
16 at the last calling of the case.

17 THE COURT: Okay.

18 MS. YOUNG: I can give those citations to the Court  
19 at a later time. I just need to --

20 THE COURT: Give those to me during the break.

21 MS. YOUNG: Yeah. I need to find the case she gave  
22 me.

23 THE COURT: That is fine. Does defense waive --

24 MS. YOUNG: -- at my fingertips right now.

25 THE COURT: Does defense waive reading of the  
26 complaint?

27 MS. YOUNG: I waive reading of the complaint. I  
28 would ask the witnesses be excluded who are not currently

1       testifying before the Court and who are potential witnesses  
2       in this matter.

3               THE COURT:   Okay.   Motion granted as to -- as far  
4       as it pertains to potential witnesses for this hearing, which  
5       is -- the Court's understanding of the state of the law  
6       opposed to the matter in general including the trial.  There  
7       are no other people here.  I see one officer and one person  
8       in the audience not related to the case.  So let's proceed.  
9       First witness.

10              MS. BUITRAGO:  Yes, your Honor.  At this time the  
11       People would call Sergeant Murphy to the witness stand.

12              THE COURT:  Come up, Sergeant.  
13       (Whereupon, Rachel Murphy was duly sworn and testifies as  
14       follows:)

15              THE CLERK:  Please be seated then and state and  
16       spell your first and last name.

17              THE WITNESS:  Rachel, R-a-c-h-e-l.  Murphy,  
18       M-u-r-p-h-y.

19                               DIRECT EXAMINATION

20       BY MS. BUITRAGO:

21       Q.       Good morning.  How are you employed?

22       A.       I'm a sergeant with the San Francisco Police  
23       Department.

24       Q.       How long have you been a sworn peace officer?

25       A.       It will be 23 years in January.

26       Q.       Have those 23 years been with the San Francisco Police  
27       Department?

28       A.       I was with the Department of Justice, the Bureau of

1       Narcotics Enforcement for about a year.

2       Q.       Where are you currently assigned?

3       A.       Tenderloin Police Station.

4       Q.       And your assignment there as a sergeant, is that a  
5       uniformed sergeant or an investigating capacity?

6       A.       I have dual duties. I'm a uniformed patrol sergeant  
7       as well as I run a plainclothes team out there.

8       Q.       And for those of us who are unfamiliar with that  
9       terminology, plainclothes, are we talking about officers that  
10      are not in uniform that conduct investigations with  
11      specifically narcotics?

12      A.       Yes.

13      Q.       Now for those of us who are unfamiliar area with San  
14      Francisco, can you please explain what kinds of arrest you  
15      generally make in the Tenderloin District?

16      A.       The Tenderloin is a very violent district. There is  
17      many crimes that occur in the Tenderloin. Pot crimes. We  
18      have murders. Robberies. Assaults. And much much drug  
19      dealing.

20      Q.       Now, Sergeant Murphy, I'd like to briefly go over some  
21      of the training and experience when it comes to narcotics. I  
22      know you mentioned you have this one year with the DOJ, the  
23      Department of Justice. Do you have any additional training  
24      when it comes to narcotics?

25      A.       I do. I worked in the San Francisco Police Department  
26      Narcotics Unit approximately four years. While I have been  
27      assigned at Mission Station, Bay View Station, Park Station,  
28      and Tenderloin Station, I worked in a plainclothes capacity

1 where I supervised plainclothes teams as well as worked  
2 undercover and purchased narcotics.

3 I'm also a member of the California Narcotics Officers  
4 Association where I receive numerous classes and training  
5 which I take yearly. I just completed a four-day conference  
6 two weeks ago right before Thanksgiving. I've also had the  
7 San Francisco Police Academy where they did instruction on  
8 narcotics. I attended the Department of Justice 80-hour  
9 narcotics training course. That is it for now I think.

10 Q. Okay. Now with respect to the trainings that you've  
11 had. During the trainings have you had the opportunity to  
12 physically observe certain types of narcotics?

13 A. I would say based on my experience I've had  
14 opportunities to observe numerous narcotics.

15 Q. And just based on looking at certain types of drugs,  
16 are you able to identify them?

17 A. Yes.

18 Q. Can you give us examples of what drugs you are able to  
19 identify just based on looking at them?

20 A. Sure. Heroin, cocaine, salt cocaine base,  
21 methamphetamine, powder as well as in its crystal form and  
22 various, various pills.

23 Q. Now you mentioned that you yourself have purchased and  
24 participated in undercover buy-busts; is that correct?

25 A. Yes.

26 Q. How many times have you participated in buy-bust  
27 operations?

28 A. Hundreds.

1 Q. Have you personally made arrests for sale of  
2 narcotics?

3 A. Yes.

4 Q. If you can estimate how many arrests you personally  
5 made?

6 A. I'd say over 300.

7 Q. Are you familiar with the term of art, indicia of  
8 sales?

9 A. Yes.

10 Q. What does that mean?

11 A. Indicia of sales would relate to the currency, like  
12 money seized, like proceeds from narcotics sales. Further,  
13 indicia would mean, like, packaging materials used to package  
14 narcotics for sales. Things of that nature.

15 Q. And so do you think, like, scales, packaging material,  
16 currency, are things that you factor into your decision on  
17 whether the item is possessed for simple possession or  
18 personal use versus sales?

19 A. It's part of it.

20 Q. And is that based on your training and experience that  
21 you consider those factors?

22 A. Yes.

23 Q. Have you previously qualified as an expert in  
24 possession for sale?

25 A. Yes.

26 Q. And do you remember what types of narcotics you  
27 qualified as an expert?

28 A. Yes.



1 Q. Which ones?

2 A. It would be cocaine, both salt and base, heroin and  
3 methamphetamine and marijuana.

4 MS. BUITRAGO: Your Honor, at this time I would  
5 like to designate Sergeant Murphy as an expert, generally  
6 speaking, in the possession for sale and more specifically in  
7 possession for sale of heroin. I will have a separate expert  
8 for the pills.

9 THE COURT: So, Sergeant, you say you have been  
10 previously qualified as an expert in possession of sale of  
11 heroin?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. Any objection, Ms. Young?

14 MS. YOUNG: Could I just voir dire briefly, your  
15 Honor? Please.

16 THE COURT: Of course.

17 VOIRE DIRE EXAMINATION

18 BY MS. YOUNG:

19 Q. Where did you qualify as an expert for sale?

20 A. San Francisco as well as in Alameda County.

21 Q. And how many times?

22 A. Specific to heroin?

23 Q. Yes.

24 A. I would say 10 to 15, somewhere around there.

25 Q. Between the two counties?

26 A. Yes.

27 Q. What kind of heroin?

28 A. Just standard heroin. Heroin.

1 Q. Is there -- so have you been trained that there is a  
2 standard kind of heroin?

3 A. I don't understand what you mean by standard.

4 Q. I'm just using your words.

5 A. Sure. Heroin is heroin. Yes.

6 Q. No. I said, have you been trained that there is a  
7 standard kind of heroin?

8 A. There is different substances of heroin but it's still  
9 heroin. I would relate it to, like, chocolate. You can  
10 have, like, chocolate that is melted or in its hard format.  
11 With heroin you can have it in like a granular powder, or you  
12 can have black tar but its still heroin.

13 Q. So when you have been qualified as an expert in  
14 possession for sale of heroin, what type of heroin were you  
15 testifying about?

16 A. Just heroin.

17 Q. Is there more than one kind of heroin?

18 MS. BUITRAGO: I think it has been asked and  
19 answered. I object to the question.

20 THE COURT: Overruled.

21 THE WITNESS: So I testified in a powder, more of a  
22 powder granular format of heroin, but it's still just heroin  
23 as well as black tar heroin, which is still heroin.

24 Q. MS. YOUNG: And so you have testified as to both forms  
25 of heroin?

26 A. Yes.

27 Q. And when you have testified regarding black tar heroin  
28 was that also here in San Francisco?

1 A. Yes.

2 Q. And when you testified regarding black tar heroin when  
3 you were previously qualified as an expert in San Francisco,  
4 is there a specific amount of heroin that you testified  
5 about?

6 A. No.

7 Q. Do you recall if there was -- what the amount of  
8 heroin was that you were testifying about?

9 A. No.

10 Q. And are you familiar with different substances being  
11 used to mimic black tar heroin?

12 A. No.

13 Q. And are you familiar with how black tar heroin is  
14 packaged?

15 A. I am.

16 Q. How is it packaged?

17 A. Many different ways.

18 Q. Okay. Is there a usual way that you see it packaged  
19 here in San Francisco?

20 A. I've seen it packaged different ways in San Francisco.

21 Q. Which ways have you seen it?

22 A. I've seen it wrapped in plastic and knotted off,  
23 individual pieces.

24 Q. And when you say wrapped in plastic, are you talking  
25 about just like Saran wrap?

26 A. Like clear plastic and then knotted off in just little  
27 tiny balls.

28 Q. Okay.

1 A. I've seen it packaged in small balloons by itself as  
2 well as with pieces of crack cocaine. I've seen it just  
3 loose like just balls being loose on a person. I've seen it  
4 held in cigarette packs. I've seen it in a kilo form. I've  
5 seen it in cups. I've seen in ashtrays. There is -- I have  
6 seen it many ways.

7 Q. And each of those forms of packaging indicates  
8 possession for sale?

9 A. It could.

10 Q. And varying amounts also indicate possession for sale?

11 A. They do.

12 Q. Is there a specific form of packaging that you have  
13 seen in your experience or that you have been trained in that  
14 indicates that packaging for personal use?

15 A. Well, all of the ones I mentioned get sold and then  
16 whoever buys it usually uses it for personal use. So it's  
17 both.

18 Q. Okay. Have you been trained in the DOJ course or  
19 courses you took here in San Francisco that there is a  
20 minimum amount of heroin before it can be considered  
21 possessed for sale?

22 A. There is not a minimum amount.

23 Q. And are you trained or were you trained in the DOJ  
24 course or the course that you took here as part of your  
25 training in San Francisco that there are specific things to  
26 look for in terms of personal use?

27 A. Yes.

28 Q. Okay. And what are those things?

1 A. Usually a person will tell you that they are a heroin  
2 addict. They will tell you they have smoking paraphernalia  
3 or shooting paraphernalia. They will have track marks.  
4 Heroin users, if they are long-time heroin users have a look.  
5 If they take heavy dosage over a period of time they are  
6 usually thin. They will be gaunt like gaunt in the face. I  
7 don't know how to describe that.

8 Q. What you are describing is that people who are heavy  
9 users will have a certain physical appearance to you that  
10 clue you that they are user?

11 A. That is part of the whole package.

12 Q. And if someone were -- if you make an arrest of  
13 someone and someone tells you that is for my personal use, is  
14 that the statement that you put -- give weight to when  
15 considering whether the heroin is possessed for personal use  
16 or for sale?

17 A. Yes.

18 Q. So an admission is the significant factor?

19 A. It's part of the whole package.

20 Q. Okay. And the items that you have been trained in to  
21 look for to determine if something is possessed for sale as I  
22 understand it are packaging possibly, correct?

23 A. Yes.

24 Q. The presence of a scale, correct?

25 A. Yes.

26 Q. The type of packaging correct or whether something is  
27 packaged in multiple quantities?

28 A. Correct.

1 Q. Is that a better way of saying it?

2 A. It's one way. A person can have a kilo and be selling  
3 that. That is only one package.

4 Q. Okay. And then the presence of money?

5 A. That is part of it as well. Yes.

6 Q. Okay. And would the absence of any of these things,  
7 have you been trained the absence of these things is  
8 something you also have to consider in making -- in forming  
9 your opinion?

10 A. Yes.

11 Q. And of the 80-hour DOJ course, how much of that was  
12 focused on the packaging of heroin?

13 A. I would say at least 8, 8 to 16 hours of that.  
14 Throughout the course you are taught about packaging. Like,  
15 you have a course on packaging and that also comes into play  
16 throughout the rest of the course when they show photographs  
17 or talk about it or doing mock purchases. Things like that.

18 Q. And we're talking just about heroin?

19 A. Yes.

20 Q. And your training --

21 A. Excuse me. With packaging there is several drugs,  
22 packages similar to heroin that incorporate other drugs as  
23 well.

24 Q. And are you trained in how much a heavy user of heroin  
25 might use in a given day?

26 A. That varies from user to user.

27 Q. Okay. So you are not told there is specific minimum  
28 gram that a user of heroin might go through in a particular

1 day?

2 A. No.

3 Q. Are you trained either in the DOJ course or the course  
4 here in San Francisco about -- have you heard the term  
5 chipping?

6 A. I'm familiar with the term.

7 Q. Okay. Correct me if I'm wrong, chipping describes a  
8 user of heroin who sort of uses small amounts either every  
9 day or possibly every other day. Is that a reasonable  
10 definition of the term chipping?

11 A. The way that I perceive chipping is that if you have a  
12 piece of heroin and you are chipping a piece off to sell or  
13 give to somebody. So that is how I see chipping.

14 Q. Okay. So you have not heard the use of the word  
15 chipping to describe somebody who's trying to use small  
16 quantities of heroin to subsist?

17 A. I've heard it just the way I've described. I'm not  
18 saying that your statement is incorrect.

19 MS. YOUNG: All right. Thank you.

20 THE COURT: Anything further?

21 MS. YOUNG: No.

22 THE COURT: Okay. Any objections?

23 MS. YOUNG: I'm going to submit it --

24 THE COURT: Okay.

25 MS. YOUNG: -- for purposes of preliminary hearing.

26 THE COURT: Okay. For the purposes of this  
27 preliminary hearing Sergeant Murphy will be recognized and  
28 qualified as an expert in the recognition of heroin, cocaine,

1 salt and base, marijuana, and methamphetamine as well as the  
2 possession for sale of each of those substances. Ms.  
3 Buitrago.

4 DIRECT EXAMINATION (Resumed)

5 Q. MS. BUITRAGO: Now, Sergeant Murphy, were you on duty  
6 on October 28 of 2015 at about 7:18 a.m.?

7 A. Yes.

8 Q. Were you patrolling the area of Turk and Leavenworth  
9 in the City and County of San Francisco?

10 A. Yes.

11 Q. Were you in uniform on that date and time?

12 A. Yes.

13 Q. Were you working with a partner?

14 A. I was.

15 Q. Who was your partner on that day?

16 A. Sergeant Candice Lewis.

17 Q. Now is Sergeant Lewis a male or female?

18 A. She's a female.

19 Q. Was she also in uniform?

20 A. She was.

21 Q. The area of Turk and Leavenworth in San Francisco,  
22 that is within the Tenderloin District, correct?

23 A. Yes.

24 Q. Does that particular area within the district itself  
25 have a certain name or reputation?

26 A. It does. It's a nationally known area called Pill  
27 Hill.

28 Q. Why is that?



1       A.       You can -- a person can purchase many varieties of  
2       pills at that location.

3       Q.       Do you recognize anyone in court today, sergeant, from  
4       that date and time and location?

5       A.       I do.

6       Q.       Who?

7       A.       It being Mr. Williams at the defense table in orange.

8               MS. BUITRAGO: Your Honor, may the record reflect  
9       the witness has identified the defendant?

10              THE COURT: Yes.

11       Q.       MS. BUITRAGO: Now, can you describe when you first  
12       came to notice the defendant?

13       A.       The defendant was standing on the side of a Volvo  
14       which was parked on Leavenworth Street and Leavenworth Street  
15       is a one-way going northbound and the Volvo was on the west  
16       side of the street. He was standing near it and the driver's  
17       window was rolled down and the sunroof was rolled down. He  
18       was kind of standing there looking up and down the street.

19       Q.       How far away would you estimate that the defendant was  
20       from this parked vehicle?

21       A.       I would say he was, like, within a foot. He was right  
22       on it.

23       Q.       Was he with anyone else?

24       A.       When I first started talking with him he was not.

25       Q.       What about -- let's take just when you first saw him  
26       next to that car. Was he with anyone?

27       A.       There may have been people passing through but I don't  
28       remember if he was specifically with someone when I had

1 rolled up to talk with him.

2 Q. Now the particular area, aside from the vehicle, is  
3 there anything next to that area?

4 A. There is a liquor store on the corner, on the  
5 southwest corner of Turk and Leavenworth.

6 Q. Okay. Sergeant, I'd like to show you two photos just  
7 so I can get our location correct.

8 MS. BUITRAGO: If I may mark these for identification,  
9 actually three photos one, two, and three just on Google  
10 images.

11 (Exhibits 1, 2, and 3 marked for identification.)

12 MS. BUITRAGO: May I approach, your Honor?

13 THE COURT: Yes. Take a look at those, Ms. Young.

14 MS. YOUNG: I did. Thank you.

15 Q. MS. BUITRAGO: Sergeant Murphy, ask you to look at  
16 these three photos. Once you've had an opportunity to look  
17 at them I'm going to ask you some questions. Okay?

18 A. Okay.

19 Q. Sergeant Murphy, do you recognize the photo contained  
20 in People's 1?

21 A. I do.

22 Q. What --

23 MS. YOUNG: Hold it up so I can see. Okay.

24 Q. MS. BUITRAGO: What is contained in People's 1?

25 A. The photo looks like it was taken from the angle on  
26 Leavenworth Street towards Turk and this picture would depict  
27 the southwest corner of Leavenworth at Turk.

28 Q. Previously you mentioned a liquor store. Is the

1       liquor store captured in that photo?

2       A.       It is.

3       Q.       If you don't mind using a pen to mark an X on the top  
4       of that liquor store so we know where you are referencing?

5       A.       And I probably shouldn't have called it a liquor  
6       store. It's a corner market.

7       Q.       Does People's 1 fairly and accurately portray the area  
8       where the incident occurred?

9       A.       It does.

10      Q.       Now moving on to People's 2, do you recognize that  
11      photo?

12      A.       I do.

13      Q.       What is that photo?

14      A.       That is a picture of Leavenworth and Turk as well.

15      Q.       Does the photo capture where the incident occurred?  
16      If it doesn't, I'm just asking generally.

17      A.       Yeah. I'm turned around backwards on this photo. So  
18      it's the corner and it's the intersection but People's 1 and  
19      3 better depict it.

20      Q.       Okay. If you wouldn't mind returning to People's 1?

21      A.       Sure.

22      Q.       Just because I'm having trouble understanding where  
23      this happened?

24      A.       Sure.

25      Q.       Where this Volvo was parked would it have been in the  
26      area contained in People's 1?

27      A.       It would have.

28      Q.       If you wouldn't mind marking with like, I guess, a

1 circle where the car would have been parked?

2 A. This is an approximate area where the car would have  
3 been parked.

4 Q. Thank you.

5 MS. BUITRAGO: At this time I would like to move  
6 People's 1 into evidence and withdraw two and three?

7 THE COURT: Any objection?

8 MS. YOUNG: Can I just see it and then have an  
9 opportunity to cross on it first?

10 THE COURT: Of course.

11 MS. YOUNG: Thank you.

12 (Exhibits 2 and 3 withdrawn.)

13 CROSS-EXAMINATION

14 BY MS. YOUNG:

15 Q. The circle depicts where the car was parked?

16 A. More kind of like just the square.

17 Q. The rectangle?

18 A. Yes.

19 Q. The rectangle depicts where the car was parked; is  
20 that right? Okay. Because it says -- I thought you said  
21 marked with the circle?

22 REDIRECT EXAMINATION

23 BY MS. BUITRAGO:

24 Q. I realize there was ambiguity, sergeant. The square  
25 on the --

26 MS. YOUNG: It's a rectangle.

27 Q. MS. BUITRAGO: The rectangle on the left portion of  
28 this photo, is that where the car was parked?

1 A. Yes. That is an approximate location.

2 MS. YOUNG: Thank you.

3 Q. MS. BUITRAGO: And the circle on the upper right part  
4 of the photo, is that where the corner store is located?

5 A. Correct.

6 MS. YOUNG: Thank you.

7 Q. MS. BUITRAGO: Now when you first saw Mr. Williams  
8 standing next to that vehicle where were you?

9 A. I was traveling northbound on Leavenworth prior to  
10 Turk Street.

11 Q. Were you -- you said driving?

12 A. I was driving.

13 THE COURT: One second. Before we get there did  
14 you have any further questions about the photograph before I  
15 decide whether to admit it?

16 MS. YOUNG: Oh, yeah. I was going to ask some  
17 questions about it. Yeah.

18 THE COURT: About the photograph itself?

19 MS. YOUNG: Yes.

20 THE COURT: So I'll take the request for admission  
21 under submission at this time. Go ahead.

22 Q. MS. BUITRAGO: So you mentioned driving a marked  
23 patrol vehicle?

24 A. I was in a marked police vehicle and it's a Tahoe.

25 Q. Okay. You mentioned you were also with Sergeant  
26 Lewis. Was she also with you in the vehicle?

27 A. She was. She was in the front passenger's seat.

28 Q. Does the Tahoe, does it have tinted windows?

1 A. I believe it does.

2 Q. What about where you two were seated?

3 A. Out the front windshield, no.

4 Q. How far away were you from Mr. Williams when you first  
5 observed him?

6 A. I would say halfway down the block.

7 Q. Could you see what, if anything, he may have been  
8 doing?

9 A. Other than standing there, no.

10 Q. You mentioned earlier that he was looking up and down.  
11 When did that happen in the sequence of events?

12 A. As I rolled closer towards him I could see he was  
13 looking up and down the block.

14 Q. Is loitering an issue that you come across a lot in  
15 your experience in the Tenderloin?

16 MS. YOUNG: Objection. Relevance.

17 THE COURT: Overruled.

18 THE WITNESS: Yes.

19 Q. MS. BUITRAGO: Can you explain some of the complaints  
20 you may have had regarding loitering in that area?

21 A. One of the particular big problems for Turk and  
22 Leavenworth is loitering for the purpose to sell or use  
23 narcotics in that area.

24 Q. Have you previously encountered people in that very  
25 location who in facts is loitering for that purpose?

26 A. Yes.

27 Q. At some point did you initiate contact with Mr.  
28 Williams?

1       A.       I did.

2       Q.       Were you still in the vehicle that you just described?

3       A.       Yes.

4       Q.       Was your partner still in that vehicle?

5       A.       Yes.

6       Q.       How far away were the two of you from Mr. Williams

7       when you initiated the contact?

8       A.       We were across just the length, width of the Volvo, so

9       however wide the Volvo would be, and then a few feet to my

10      vehicle.

11      Q.       Is it fair to say 10 to 15 feet?

12      A.       I would say less than that.

13      Q.       Less than 10 feet?

14      A.       Yes.   Yes.

15      Q.       Okay.  Now, when you initiated the contact did your

16      police vehicle anyway impede the path of travel for that

17      Volvo?

18      A.       Well, the Volvo was parked and there was no one in the

19      driver's seat.  I pulled up next to the Volvo.

20      Q.       So if you had to characterize the positioning of your

21      vehicle, would it be fair to say your car was parallel to the

22      Volvo?

23      A.       Yes, it was.

24      Q.       And when you pulled up on this Volvo, did you use any

25      police activated lights?

26      A.       I did not.

27      Q.       What about any sirens?

28      A.       No.

1 Q. Did you brandish any weapons?

2 A. No.

3 Q. Did your partner brandish any weapons?

4 A. No.

5 Q. What -- Did you say something to Mr. Williams?

6 A. I did.

7 Q. Do you remember the tone of your voice?

8 A. I do.

9 Q. What was it like?

10 A. It was pleasant.

11 Q. What did you say to initiate this contact?

12 A. Initially I said hi to Mr. Williams, and I asked him

13 how his morning was going.

14 Q. Do you remember what his response was?

15 A. He said good.

16 Q. Do you remember if there was anything unusual about

17 his demeanor at that point?

18 A. No.

19 Q. What happened after that?

20 A. I asked him what he was doing out there, and he told

21 me he was hanging out.

22 Q. What did you do in light of that response?

23 A. I asked him how long he had planned on hanging out

24 for.

25 Q. Now, just within this part of the interaction when you

26 were asking him if he was hanging out, was there any physical

27 change in the positioning of you and your partner in

28 comparison to the defendant?



1       A.       No. I remained in the driver's seat with the vehicle  
2       running. My partner was still in the passenger's seat and  
3       Mr. Williams was still on the other side of the Volvo on the  
4       sidewalk.

5       Q.       And you previously mentioned the light, sirens, and  
6       lack of weapons, was all of that still the same during this  
7       part of the encounter?

8       A.       Yes.

9       Q.       So how did the defendant respond when you asked him  
10      how long he planned on hanging out for?

11      A.       He told me approximately 45 minutes.

12      Q.       Was there any change in his demeanor at that point?

13      A.       I didn't get the feeling he was happy to see me. He  
14      wasn't like over talkative or anything of that nature.

15      Q.       Okay. So what did you do after he said he was going  
16      to hang out about 45 minutes?

17      A.       This kind of peeked my curiosity of why the 45  
18      minutes, and I asked him if he lived in the area or if he  
19      lived on Turk or Leavenworth and then in the city. He said  
20      -- he said -- he wouldn't give me an answer. He said, I kind  
21      of live around and he was, like, do you live in San  
22      Francisco, and he goes, I kind of live around. So he  
23      couldn't give me a definitive answer.

24      Q.       So what did you do after that?

25      A.       I asked Mr. Williams if he was on probation or parole.

26      Q.       Were you still in the car when you asked him these  
27      questions?

28      A.       I was.

1 Q. Were all of those factors you went over in terms of  
2 your positioning the police vehicle, sirens, lights, all of  
3 that still the same?

4 A. Yes.

5 Q. Was your partner also still in the vehicle?

6 A. She was.

7 Q. Did any other patrol cars arrive?

8 A. Not at this point.

9 Q. What about any other unmarked patrol cars or foot beat  
10 officers? Anyone else arrive during this part?

11 A. No.

12 Q. So it's just the two of you female officers and the  
13 defendant?

14 A. Yes.

15 Q. And you still no display of weapons?

16 A. Correct.

17 Q. How did the defendant respond to your question about  
18 his probation or parole status?

19 A. He, in my opinion, became a little more nervous. Kind  
20 of started moving side to side a little bit more, and he was  
21 looking southbound on Leavenworth which is the way we had  
22 came which is a one-way northbound. And then he didn't  
23 answer me. I asked him again if he was on probation or  
24 parole. He said he wasn't on parole.

25 Q. When the defendant said he was not on parole, do you  
26 remember what kind of tone of voice he used?

27 A. He was -- he was a soft speaker. He wasn't a loud  
28 speaker. He just said, well, I'm not on parole. I guess --

1 I don't really -- just kind of a normal.

2 Q. Okay. In your police report you used exclamation  
3 points to say, well, I'm not on parole in quotes?

4 A. Yes.

5 Q. Any reason why you put explanation points?

6 A. I just found that very interesting. He didn't answer  
7 my question in its entirety. So when he said he was not on  
8 parole. I'm thinking, well, then he's probably on probation  
9 because a person in my experience to say I'm not on any paper  
10 or I'm not on either paper, meaning parole or probation. So  
11 when he was specifically saying I'm not on parole, I'm  
12 thinking, well, what about probation?

13 Q. Did you ask him about his probation status?

14 A. I did ask him if he was on probation.

15 Q. And was that after he made the comment about not being  
16 on parole?


17 A. Yes.

18 Q. Did Mr. Williams respond to that question?

19 A. He did respond.

20 Q. How did he respond?

21 A. He said something but it was low volume and it was  
22 kind of mumbled, and I couldn't hear what he had said.

23 Q. Now you previously mentioned that the defendant, Mr.  
24 Williams, was kind of shifting and you characterized him as  
25 nervous during this part of the encounter. Did he do  
26 anything when he was plumbing? 

27 A. He did. He turned to walk away.

28 Q. Do you remember what way he walked?

1       A.       He turned -- he turned to his right. So he had been  
2       facing me, and I turned to his right, and he didn't commit to  
3       like a north or a south. He kind of started walking towards  
4       the building line.

5       Q.       And would that be the same building line that was the  
6       corner store?

7       A.       Yeah. It would be parallel to where the Volvo was  
8       parked.

9       Q.       Okay. Now prior to this encounter, did you know the  
10      defendant?

11     A.       I did not.

12     Q.       Did you know anything about his probation or parole  
13      status?

14     A.       I did not.

15     Q.       What did you do given the defendant's reaction of what  
16      you said was mumbling and walking away?

17     A.       I backed the patrol vehicle up.

18     Q.       Why would you back it up?

19     A.       My train of thought was that he was going to run and  
20      if he ran a likely avenue of escape would be to go southbound  
21      on Leavenworth because it's a northbound traffic, because I  
22      wanted to get more south of the defendant and approach him  
23      coming from the south. So I backed my vehicle up, plus I was  
24      parked pretty close to the Volvo, and I didn't want to smack  
25      my door against the Volvo.

26     Q.       Now you mentioned that you wanted to approach the  
27      defendant in a way that was consistent with approaching  
28      face-to-face; is that correct?

1 A. No, it was --

2 MS. YOUNG: Objection. Okay. I was going to say  
3 that misstates her testimony, but she's agreeing it misstates  
4 the testimony. I would ask that this be reasked. For her to  
5 restate her testimony.

6 THE COURT: Sustained. Go ahead, Ms. Buitrago.

7 Q. MS. BUITRAGO: So when you backed your car up, did you  
8 exit the vehicle?

9 A. I did.

10 Q. When you exited the vehicle were you facing the  
11 defendant?

12 A. I was.

13 Q. Okay. So you are not coming -- you are not chasing  
14 after him or anything like that?

15 A. Correct.

16 Q. When you approached him on foot, did you brandish any  
17 weapons?

18 A. I did not.

19 Q. Was it still just you and your partner?

20 A. It was.

21 Q. How far away were you from the defendant when you two  
22 were on foot to mean you and your partner?


23 A. I would say within the 10 foot mark as well.

24 Q. Did you have a clear unobstructed view of the  
25 defendant?

26 A. I had a partial view of him when I was walking from my  
27 patrol vehicle behind the Volvo to the sidewalk. Then once I  
28 hit the sidewalk line, I had a full view of him.

1 Q. Okay. What did Mr. Williams do when he exited the  
2 vehicle?

3 A. He reached -- so I had the view of Mr. Williams that I  
4 had with his back and kind of his left side, and I saw him  
5 use his right arm come across his body. I couldn't see what  
6 he was doing, but I saw the motion from his shoulder come  
7 across and his left arm was a bit stiff, and he did something  
8 but I couldn't see because that was out of my view. Then Mr.  
9 Williams put his left hand in his pocket.

10 Q. In your training and experience as a police sergeant  
11 does not being able to see a possible suspect's hand prevent  
12 any issue for you? 

13 MS. YOUNG: Objection. Leading.

14 THE COURT: Sustained.

15 Q. MS. BUITRAGO: What comes across your mind when you  
16 can't see a suspect's hands?

17 A. It gives me pause and concern that they are possibly  
18 one, reaching for a weapon. Two, trying to conceal or get a  
19 hold of something to conceal whether it's any type of  
20 contraband, drugs, or whatever else it may be.

21 Q. What happened after Mr. Williams placed his hand in  
22 that left pocket?

23 A. I told him to take his hand out of his pocket.

24 Q. Why was that?

25 A. I didn't want -- I was fearful and I didn't know if he  
26 had a weapon or not, and I wanted to see his hand and that it  
27 was free of a weapon.

28 Q. Did Mr. Williams comply with that request?

1       A.       He did take his hand out of his pocket.

2       Q.       What did he do with his hand?

3       A.       He went to his mouth with his hand.

4       Q.       Did you see if there was anything in his hand?

5       A.       There were small objects, but I couldn't see what they

6       were.

7       Q.       What did he do with those small objects?

8       A.       He just placed them in his mouth.

9       Q.       What did you think based on his conduct?

10            MS. YOUNG:  Objection.  The question calls for

11       speculation.

12            THE COURT:  Overruled.

13            THE WITNESS:  I believe Mr. Williams put narcotics

14       in his mouth.

15       Q.       MS. BUITRAGO:  In your 23 years as a sworn peace

16       officer and given your experience in the Tenderloin in

17       particular with Pill Hill and the narcotics arrests you

18       mentioned, have you encountered suspects in the past who have

19       put narcotics in their mouth?

20       A.       Yes.

21       Q.       Is that a common form of concealment?

22       A.       Yes.

23       Q.       What did you do next?

24       A.       I told Mr. Williams to put his hands behind his back.

25       Q.       Did he comply?

26       A.       He did.

27       Q.       What did he do once his hands were behind his back?

28       A.       I moved up behind him and handcuffed him with Sergeant

1 Lewis.

2 Q. Why did you decide to handcuff him at that point?

3 A. Because I didn't want to chase him or fight with him.

4 Q. Sergeant Murphy, is the defendant larger than you?

5 A. He is.

6 MS. YOUNG: Objection. Relevance.

7 THE COURT: I'm sorry?

8 MS. BUITRAGO: Relevant for a 148, your Honor.

9 THE COURT: There is a 148 charge. Overruled.

10 Q. MS. BUITRAGO: Is he also taller than you?

11 A. Yes.

12 Q. Now once you were placing handcuffs on the defendant  
13 could you see anything?

14 A. Yes.

15 Q. What could you see?

16 A. I noticed he was moving his mouth around, like his jaw  
17 kind of back and forth. You could also hear it. He was  
18 shuffling or maneuvering things in his mouth.

19 Q. What did you do in light of that observation?

20 A. I mouthed to Sergeant Lewis that he put dope in his  
21 mouth.

22 Q. Why would you mouth that to her as opposed to saying  
23 it aloud?

24 A. The handcuffs weren't on him fully yet, and I wanted  
25 him to think that I didn't think he put dope in his mouth and  
26 that we may have had an opportunity to retrieve it. So I  
27 didn't want him to hear me tell her that, and also, I didn't  
28 want him to resist putting on the cuffs.



1 Q. Did he resist putting on the cuffs?

2 A. No.

3 Q. Now with respect to your experience when someone may  
4 have possible contraband in their mouth are you trained on  
5 how to retrieve it, if any way, if possible?

6 A. Yes.

7 Q. What would you do in that circumstance based on your  
8 training?

9 A. You can apply the mastoid and that pressure will  
10 usually prevent a person from swallowing. And then you give  
11 them directions to have them spit it out. Sometimes they  
12 spit it out.

13 Q. Did you attempt to use that maneuver on that this date  
14 and location?

15 A. I did.

16 Q. Were you successful?

17 A. I was not.

18 Q. Can you explain the steps you took trying to get the  
19 possible contraband out of the defendant's mouth?

20 A. Sure. So from behind Mr. Williams and from the left  
21 of him I reached around and up, and I tried to apply the  
22 mastoid underneath his left ear with my fingertip trying to  
23 get underneath his right ear and squeeze and it prevented him  
24 from swallowing and then he was thrashing from side-to-side  
25 to remove my hold, and he was successful. I wasn't able to  
26 hold on to him. We were able to get him over to the back of  
27 the Volvo and bend him and use our weight to hold him against  
28 the Volvo where I tried it again, and he would just stretch

1 forward and lean forward again breaking my hold.

2 I was able to pull his hair back and get a clean line of  
3 his neck and apply mastoid from the front but by then I  
4 believe he had already swallowed it I believe. He didn't  
5 have anything else in there.

6 Q. Were you asking him to spit it out. Were you also  
7 issuing those commands?

8 A. Yeah. I was yelling spit it out. Spit it out.

9 Q. And based on what you just stated, I take it he never  
10 spit the drugs out?

11 A. No.

12 Q. Did you happen to notice anything else on the  
13 defendant during this struggle?

14 A. I did.

15 Q. What did you notice?

16 A. Well, after the struggle -- do you want me to tell you  
17 what I noticed after the struggle?

18 Q. Sure.

19 A. He had a bill crumpled in his hand, and Sergeant Lewis  
20 when she went to grab it we got a huge whiff, smell of --  
21 vinegar -- of a vinegar smell.

22 Q. Now, when you say bill are you referring to currency?

23 A. Yes. I'm sorry.

24 Q. And this odor that you smelled, did you recognize it  
25 based on your training and experience?

26 A. I did.

27 Q. What did you recognize it to be consistent with?

28 A. Heroin.

1 Q. Did you or your partner make any efforts to retrieve  
2 the items?

3 A. Yes.

4 Q. What did you guys do?

5 A. Sergeant Lewis seized it from Mr. Williams' hand and  
6 then later handed it to me.

7 Q. Did you have an opportunity to inspect the contents?

8 THE COURT: Why don't we take that question up in a  
9 further line after the recess. Let's take our noon recess  
10 right now. Mr. Williams, you are ordered present back in  
11 this department at 1:30. We'll continue the hearing at that  
12 time. Okay. Sergeant, thank you.

13 (Matter continued to 1:30.)

14 THE COURT: We're back in session and we are in the  
15 middle of a preliminary hearing. After the preliminary  
16 hearing concludes, we will do the arraignments. And after  
17 those arraignments, we will do the Farrello case. Okay. I'm  
18 just giving everyone a time frame. We are likely not to  
19 start on Mr. Farrello's matter for another hour, about 2:30.

20 Okay. Back on the record in the matter of the  
21 People versus Willie Williams at lines 14 and 15. Both  
22 counsel are present. Mr. Williams is present. And, Sergeant  
23 Murphy, if you could retake the witness stand, please. You  
24 are still under oath. Good afternoon.

25 THE WITNESS: Good afternoon, sir.

26 Q. MS. BUITRAGO: I think where I left off, Sergeant  
27 Murphy, before the noon hour was with asking you about  
28 Sergeant Lewis and her seizure of that item that was in this

1 currency?

2 A. Yes.

3 Q. Were you able to see that item?

4 A. I was.

5 Q. Based on your background, training, and experience, do  
6 you have an opinion as to what that substance was?

7 A. I do.

8 Q. What is that?

9 A. Heroin.

10 Q. And can you describe how you were able to come to that  
11 conclusion?

12 A. The smell, like vinegar. The appearance. And --  
13 yeah, the smell and the appearance. And then it was  
14 presumptive tested later on that day.

15 Q. Okay. I'll get to that in a moment.

16 A. Okay.

17 Q. Do you remember how it was packaged at all?

18 A. It was held in a \$20 bill.

19 Q. Now, earlier during your qualification as an expert,  
20 you explained how heroin comes in different forms, if you  
21 will. What kind was this?

22 A. We would call this black tar.

23 Q. Now, once Mr. Williams was handcuffed and this  
24 suspected heroin was seized, did other units arrive?

25 A. They did.

26 Q. Was Officer Solorzano part of one of the units that  
27 arrived?

28 A. He was.

1 MS. BUITRAGO: And for the record, that's  
2 S-o-l-o-r-z-a-n-o.

3 Q. MS. BUITRAGO: Did Officer Solorzano conduct an arrest  
4 search of the defendant?

5 A. He did.

6 MS. YOUNG: Objection. Lack of foundation.

7 THE COURT: Sustained.

8 Q. MS. BUITRAGO: To your knowledge, was the defendant  
9 searched incident to arrest?

10 A. Yes.

11 Q. Were you present for that search?

12 A. Yes.

13 Q. Who conducted that search?

14 A. Officer Solorzano.

15 Q. Do you know based on your physical presence there and  
16 your observations if anything was recovered during this  
17 arrest search?

18 A. Yes.

19 Q. What did Officer Solorzano recover based on your  
20 observations?

21 A. He recovered pills.

22 Q. After he recovered those pills, did you have an  
23 opportunity to personally inspect them?

24 A. I did.

25 Q. Do you remember what was found?

26 A. Found Oxycodone, morphine, and a generic form of  
27 Xanax.

28 Q. Do you remember the respective amounts?

1 A. The Oxys -- I know there were about 30, approximately  
2 30 Xanax pills. There were three Oxys and six morphines.

3 Q. Did you --

4 MS. YOUNG: I'm sorry. I'm confused.

5 THE COURT: Can you give us the quantities, please?

6 THE WITNESS: Sure. May I look at my report to  
7 refresh my memory for the exact amounts?

8 Q. MS. BUITRAGO: If that would help refresh your memory,  
9 please do.

10 A. So the Oxycodone, there were six pills. The morphine  
11 pills, there were three pills. And the Xanax, which is a  
12 generic form, the Alprazolam, there were 30 pills.

13 Q. Did Sergeant Lewis, your partner, also search Mr.  
14 Williams?

15 A. She did.

16 Q. Were you present for that?

17 A. I was.

18 Q. Did she recover anything?

19 A. She did.

20 Q. What did she find?

21 A. She recovered the currency that was in Mr. Williams'  
22 pocket.

23 Q. Do you remember the amount?

24 A. It was \$1,336.

25 Q. Did the defendant have a cell phone on him at all?

26 A. He did.

27 Q. Do you remember who recovered that?

28 A. I did.

1 Q. What kind of phone?

2 A. I forget. I would have to look at the report to see  
3 what kind of phone it was, but it was a cell phone.

4 Q. Okay. And you mentioned the Volvo earlier?

5 A. Yes.

6 Q. Do you ever find any car keys on the defendant?

7 A. I found a car key, the Volvo key which was in Mr.  
8 Williams' hand, which I seized.

9 Q. What did you do when you found that key?

10 A. I held onto it because I was in the process of cuffing  
11 him. He had his key and his phone in his hand. I took those  
12 items and put them in my pocket and then finished handcuffing  
13 him.

14 Q. So this was kind of, if I'm understanding you  
15 correctly, it was before the whole swallowing mouth incident  
16 occurred?

17 A. That occurred right after I seized those.

18 Q. Okay. Now, did you attempt to seize this -- what, if  
19 anything, did you do with the car key?

20 A. I booked it.

21 Q. Did you attempt to see if it did, in fact, connect to  
22 that Volvo?

23 A. It did.

24 Q. Was the Volvo searched?

25 A. It was.

26 Q. Do you know if anything was found during that search?

27 A. Yes.

28 Q. What?

1 A. I seized a box of sandwich bags and loose sandwich  
2 bags that were in the vehicle as well.

3 Q. Now, the narcotics that were seized by Officer  
4 Solorzano, were those taken to Tenderloin Station?

5 A. They were.

6 Q. Earlier in your testimony you mentioned a presumptive  
7 test was conducted?

8 A. Yes.

9 Q. Were you present for that presumptive test?

10 A. I was.

11 Q. Do you know who conducted the test?

12 A. Officer Assereto, A-s-s-e-r-e-t-o.

13 Q. Now, can you do a presumptive test on pills?

14 A. No.

15 Q. So what was the presumptive test on?

16 A. The heroin.

17 Q. Are you --

18 A. Just pertaining to Mr. Williams.

19 Q. Okay. Are you trained on how to conduct a presumptive  
20 test?

21 A. I am.

22 Q. To your knowledge, is Officer Assereto also trained on  
23 how to conduct that test?

24 A. Yes.

25 MS. YOUNG: Objection. Lacks foundation.

26 THE COURT: Sustained.

27 Q. MS. BUITRAGO: Are you Officer Assereto's sergeant?

28 A. Yes.



1 Q. Is it part of basic training on how to conduct a  
2 presumptive test?

3 A. It is.

4 Q. Based on your personal training and experience on how  
5 to conduct that test, did it appear as though Officer  
6 Assereto followed that same procedure?

7 MS. YOUNG: Objection. Lack of foundation.

8 THE COURT: Overruled.

9 THE WITNESS: Yes.

10 Q. MS. BUITRAGO: What was the result of that presumptive  
11 test on the heroin?

12 A. Positive for heroin.

13 Q. Do you remember the weight of the heroin?

14 A. It was 2.8 grams.

15 Q. While back at Tenderloin Station, did you obtain  
16 identifying information for the defendant?

17 A. I did.

18 Q. After obtaining that information, did you run  
19 background checks on the defendant?

20 A. I did.

21 Q. Are you trained on how to run a background check?

22 MS. YOUNG: Objection. Relevance.

23 THE COURT: One second, please. Sustained as to  
24 relevance.

25 MS. BUITRAGO: I think it goes to the defendant's  
26 consciousness of the guilt when asked about his probationary  
27 status. If the Court is going to sustain the objection, I  
28 would ask the Court in the alternative to take judicial

1 notice of the defendant's open MTR, Case No. 13032056, noting  
2 that he's on probation through 2020. It's a felony grant of  
3 probation with a search clause.

4 THE COURT: This Court will take judicial notice of  
5 -- one second, please. May I have the docket on that,  
6 please?

7 The Court has taken judicial notice of its docket in  
8 Court No. 13032056 showing that on the date in question in  
9 this case, the 28th of October 2015, Mr. Williams appears to  
10 have been on mandatory supervision with a search condition.

11 Go ahead.

12 MS. YOUNG: Still -- I understand the Court can  
13 take judicial notice of files that are part of this Court's  
14 retained records, but it still has no relevance to the  
15 detention and the arrest here which was done without  
16 knowledge. That was established in the direct examination.

17 So I'm not objecting to the Court taking judicial  
18 notice. It just doesn't have relevance to the other issues.

19 THE COURT: I understand your argument, and I think  
20 the testimony is clear that Sergeant Murphy did not know  
21 whether or not Mr. Williams was on probation. Another issue  
22 for the Court to consider is what Mr. Williams acknowledged  
23 was at the time that he had interactions with the officers,  
24 and for that reason I believe that it is relevant that he was  
25 on probation with a search condition and that is why I've  
26 admitted that and I'm taking judicial notice for that  
27 purpose.

28 Go ahead, Ms. Buitrago.

1 Q. MS. BUITRAGO: Now, Sergeant Murphy, returning to the  
2 narcotics that were seized in connection with the defendant's  
3 arrest search, did you bring those items with you here today?

4 A. I did.

5 Q. And did you also have an opportunity to call the  
6 Alameda County Sheriff's Office and, in particular, their  
7 crime lab?

8 A. I did.

9 Q. Did you speak with an individual by the name of Marco  
10 Romo?

11 A. Yes.

12 Q. When did you speak with that individual?

13 A. This morning.

14 Q. Was that prior to testifying?

15 A. Yes.

16 Q. Did you take notes during that conversation?

17 A. I did.

18 MS. BUITRAGO: Your Honor, if I may approach?

19 THE COURT: Yes.

20 Q. MS. BUITRAGO: Sergeant Murphy, I would like to ask  
21 you some questions about that conversation. If you wouldn't  
22 mind just first walking us through the steps that you took to  
23 bring those items of evidence to court today?

24 A. Sure. I went down to the basement to our property  
25 division -- excuse me -- and checked out the narcotics  
26 pertaining to this case, according to the lab number and the  
27 case number. I then walked into a small room and had a  
28 teleconference with the chemist who tested the narcotics in

1       this case, and I logged our conversation down on the form  
2       that you just provided to me.

3       Q.       Okay. Now, when you went to evidence to get the  
4       items, did you confirm that the police report and lab number  
5       were the same in terms of what you physically observed on the  
6       packaging evidence and what you have noted in your police  
7       report?

8       A.       Yes.

9       Q.       If you wouldn't mind telling us what that lab number  
10      is so that we are all on the same page here?

11      A.       Sure. The San Francisco police lab number is  
12      15294266.

13      Q.       And is there also an Alameda County lab number  
14      associated with this?

15      A.       There is.

16      Q.       What is that?

17      A.       It's L as in Lincoln, 15-2160-1 or number sign one.

18      Q.       Now, when you went to property, that evidence that you  
19      retrieved, did it have a lab report attached to the envelope?

20      A.       It does.

21      Q.       Does that lab report also happen to have that same  
22      number that you just referenced, the L1521601?

23      A.       Yes.

24      Q.       Sergeant, if you wouldn't mind opening the envelope  
25      that you brought to court today, and we'll go over the  
26      contents?

27      A.       Sure.

28      Q.       If I can just ask you --

1 MS. BUITRAGO: If I can just have a moment, your  
2 Honor --

3 THE COURT: Yes.

4 MS. BUITRAGO: -- to mark the exterior of the  
5 envelope as People's 2 for identification?

6 THE WITNESS: I'm sorry?

7 Q. MS. BUITRAGO: The exterior of the envelope as  
8 People's 2. And if you wouldn't mind marking 2A as the lab  
9 report that you just referenced to us. And then we'll go  
10 through each of those.

11 Officer, now that you have opened the envelope,  
12 People's 2, are there subparts of that envelope?

13 A. There are.

14 (Exhibits 2 and 2A marked for identification.)

15 MS. BUITRAGO: If I can just have one second?

16 THE COURT: Sure.

17 Q. MS. BUITRAGO: If you wouldn't mind counting how many  
18 subparts are contained or that were contained in that  
19 envelope?

20 MS. YOUNG: Could I see the lab test results?

21 MS. BUITRAGO: Sure.

22 Q. MS. BUITRAGO: Sergeant, now that you've had an  
23 opportunity to look through the contents, how many subparts  
24 or individually packaged items are -- or were in People's 2?

25 A. There is an additional seven plastic baggies that have  
26 my writing on it.

27 MS. YOUNG: Do you mind if I approach while she is  
28 testifying to this part?

1 THE COURT: No, not at all.

2 Q. MS. BUITRAGO: With respect to those seven baggies, do  
3 you recognize them?

4 A. I do.

5 Q. And how many of those baggies, if any, were seized  
6 from the defendant during that arrest search?

7 A. There were four -- there is four envelopes that we put  
8 items that we seized from the defendant in the envelopes. He  
9 didn't have the envelopes on him. I did.

10 Q. Okay. Can you just describe that?

11 A. Sure. So there is a plastic ziplock bag with white on  
12 it. It has my initials, my star number, suspected heroin.  
13 It's labeled E1. It has a case number and a lab number on it  
14 and it says that it's wrapped in a \$20 bill.

15 Q. Okay. If I can ask you to mark that as People's 2B  
16 for identification, please?

17 A. Sure.

18 (Exhibit 2B marked for identification.)

19 THE COURT: Off the record. Back on the record.

20 Earlier in this hearing there were three  
21 photographs. The witness was shown three photographs. After  
22 discussing one, which is People's 1, it became apparent that  
23 People's 2 and 3 that are marked for identification were not  
24 as good as People's 1. So People's 2 and People's 3 were  
25 withdrawn. I allowed those to be withdrawn. So then 2 and 3  
26 are now open for use. And Ms. Buitrago has stated what a new  
27 People's 2 and 2A now are, and those are still marked for  
28 identification purposes at this time only.

1 MS. BUITRAGO: May I continue?

2 THE COURT: Yes.

3 Q. MS. BUITRAGO: Sergeant, with respect to what you've  
4 identified as People's 2B, is that the item that you observed  
5 on the defendant during this arrest?

6 A. Yes.

7 Q. Now, do you recognize anything else from those seven  
8 separate baggies that were contained in People's 2 from the  
9 incident?

10 A. I do.

11 Q. If I can ask you to mark the next thing you recognize  
12 as People's 2C and describe it for us?

13 A. Sure. We listed it as Evidence 2, E2, and it would be  
14 the Oxycodone pills. And again, it has the case number, the  
15 lab number, my initials, my star.

16 (Exhibit 2C marked for identification.)

17 Q. Would you mind physically describing the appearance of  
18 those pills for us?

19 A. Sure. They are green in color. They have an 80 or --  
20 excuse me, not an 80. An OP on the back side of the pills.  
21 And they are contained in a smaller ziplock baggie that were  
22 with the defendant. They came all together.

23 Q. So the smaller ziplock baggie, was that on the  
24 defendant? It was packaged that way?

25 A. Correct.

26 Q. What is the next thing you recognize there?

27 A. I have that listed as Evidence 3, E3, and that would  
28 be the morphine pills. And there were three morphine pills.

1 And again, the case number, the lab number, my initials and  
2 my star number.

3 Q. Okay. If I can ask you to please mark that for  
4 identification as People's 2D.

5 Would you mind physically describing the appearance  
6 of those pills?

7 (Exhibit 2D marked for identification.)

8 A. They are capsules, three capsules and they are green  
9 or turquoise in color, and they were also held in a smaller  
10 ziplock baggie, the same as the other pills, the Oxycodone  
11 pills.

12 Q. Is there anything else you recognize from the  
13 defendant's arrest that day?

14 A. There is.

15 Q. What is that?

16 A. It's Xanax, and that is listed as Evidence 4. There  
17 were 30 pills. My initials, star number, case number, lab  
18 number are listed.

19 Q. If I can ask you to please mark that as People's 2E  
20 for identification.

21 And if you wouldn't mind describing the physical  
22 appearance of the contents of 2E?

23 (Exhibit 2E marked for identification.)

24 A. Sure. They are salmon or orange in color, and they  
25 are oval.

26 Q. And when you say they, are you referring to the  
27 tablets?

28 A. Yes.



1 Q. How were the tablets, those 30 salmon-colored tablets  
2 packaged when you found them?

3 A. They were packaged in plastic, clear plastic and  
4 knotted off.

5 MS. BUITRAGO: At this point, Your Honor, I'd like  
6 to move People's 2 and its subcontents A through E into  
7 evidence.

8 THE COURT: Any objection?

9 MS. YOUNG: Yes. Of course, yeah.

10 THE COURT: Which is?

11 MS. YOUNG: Well, this is all the subject of the  
12 motion to suppress and there has been no cross-examination on  
13 it. So, yeah. This is all being moved to be excluded from  
14 evidence.

15 THE COURT: All right. So as to the motion to  
16 suppress, any objection?

17 MS. YOUNG: And cross-examination, yes.

18 THE COURT: Okay. I'll take that under submission.

19 Q. MS. BUITRAGO: Just to clarify, Sergeant Murphy, so  
20 we've marked four of the seven baggies for identification --

21 A. Yes.

22 Q. -- is that correct? The other three that are  
23 unmarked, were those recovered from the defendant?

24 A. No.

25 Q. Thank you. Now, returning -- Sergeant, now, returning  
26 to your conversation with Marco Romo from the crime lab, did  
27 you ask Mr. Romo what his title was at the crime lab?

28 A. I did. He told me he was a criminalist.

1 Q. Did you ask him if he regularly tests for controlled  
2 substances as defined by the Health and Safety Code?

3 A. Yes. And his response was yes.

4 Q. Did you ask him about the type of education he  
5 received which would be relevant to his job duties as a  
6 criminalist?

7 A. I did. He said he had a bachelor's degree in  
8 chemistry from San Jose State.

9 Q. Did you ask him what his work experience was with  
10 respect to narcotics testing?

11 A. Yes. He told me approximately 11 and a half years.

12 Q. Did you ask him if he recognized the envelope that we  
13 marked for identification as People's 2?

14 A. Yes.

15 Q. Did he tell you how he recognized the envelope?

16 A. His first initial, his last name, and his handwriting.

17 Q. Did you ask him if when he received the envelope which  
18 we've marked as People's 2 for identification, if it was in a  
19 sealed condition?

20 A. Yes. And he responded yes.

21 Q. Did you ask him if he had a present recollection of  
22 the test results in this case?

23 A. Yes. And he responded no.

24 Q. Did you ask him if he personally tested the evidence  
25 in this case, specifically, People's 2B, 2C, 2D, and 2E?

26 A. Yes. And he responded yes.

27 Q. Did you ask him if he routinely writes down the record  
28 of his test results?

1 A. Yes. And he replied yes.

2 Q. Did you ask him if he recorded the test results  
3 immediately after he performed the test?

4 A. Yes. And he replied yes.

5 Q. Did you ask him where he recorded those results?

6 A. Yes. And he said in their computer database.

7 Q. Now, the form that I've marked for identification as  
8 People's 2A, the lab results, did you show him that form?

9 A. I did.

10 Q. Did he recognize it?

11 A. He did.

12 Q. Did he explain to you how he recognized it?

13 A. He said his signature at the bottom.

14 Q. Did you ask him if the writing itself was a true  
15 statement of the test results in connection with this case?

16 A. I did. And he said it was.

17 Q. Did you ask him if he used standard operating methods  
18 to test the evidence?

19 A. I did. And he said he did.

20 Q. Did you ask him how he knew that he used the standard  
21 operating method?

22 A. Yes. And he responded that he indicated it in his  
23 notes.

24 Q. Did you ask him how many times he has used this  
25 testing method to test this type of drug?

26 A. I did. And he said a thousand plus.

27 Q. Did you ask him if the testing methods used in this  
28 case are accepted in the relevant scientific community?

1 A. Yes. And he responded yes.

2 Q. Did you ask him if both presumptive and confirmatory  
3 tests were performed?

4 A. Yes. And he responded yes.

5 Q. Did you ask him how he knew that both of these tests  
6 were performed?

7 A. Yes. And he said it was part of their standard  
8 operating procedure to do so.

9 Q. Did you ask him if the test results appeared to be  
10 both valid and unexceptional?

11 A. Yes. And he responded yes.

12 Q. Did you ask him what he recorded as a result of this  
13 test?

14 A. I did.

15 Q. If you wouldn't mind going over the recorded results?

16 A. Can I have a minute to match that with just the items,  
17 the narcotics from Mr. Williams?

18 Q. Sure.

19 A. Okay.

20 THE COURT: One second.

21 Okay. Go ahead.

22 THE WITNESS: So with regard to -- do you want me  
23 to go through just the narcotics that were seized from -- the  
24 suspected narcotics that were seized from Mr. Williams?

25 Q. MS. BUITRAGO: Yes.

26 A. Okay. So the heroin tested positive for heroin and  
27 cocaine and it was 0.3 grams net, and he has that listed as  
28 1F even though I have it listed as Evidence 1.

1 Q. Okay. What else did he tell you about the results?

2 A. That he listed 1A positive for Oxycodone, which I have  
3 as Evidence 2, the suspected Oxycodone. And then he has the  
4 morphine tested positive and he has that listed as 1B and I  
5 have that listed as Evidence 3 and he did that as 0.45 grams.

6 Actually, stand by on that one. I have to compare  
7 that with his notes from the evidence envelope.

8 That is correct.

9 MS. YOUNG: What is correct?

10 THE WITNESS: That the chemist listed 1B as the  
11 morphine tablets and they total 0.45 grams.

12 MS. BUITRAGO: Can I have my lab results back?

13 MS. YOUNG: Yeah.

14 Q. MS. BUITRAGO: Sergeant Murphy, based on your  
15 background, training, experience, the heroin that you  
16 observed wrapped in that \$20 bill, is that a usable amount?

17 A. Yes.

18 Q. Do you have an opinion based on your expertise as to  
19 the type of possession of that heroin?

20 A. I believe Mr. Williams possessed that for sales.

21 Q. Can you explain what factors you're relying on in  
22 coming to that expert opinion?

23 A. Sure. Mr. Williams, he had it in his hand in an area  
24 where narcotics are sold regularly and daily. He had it  
25 readily accessible to go for sales. He had no smoking  
26 paraphernalia, no shooting paraphernalia on his person. And  
27 I believe that he possessed it for sales.

28 Q. The other items that we've gone over, the Oxy pills

1 and morphine and the Xanax, do those play a factor in your  
2 decision or opinion?

3 A. They do.

4 Q. Can you explain why?

5 A. I believe that Mr. Williams also possessed those pills  
6 for sale, and I believe that he basically possessed a variety  
7 of different illegal narcotics to sell from that location and  
8 I believe that is what he possessed them for.

9 Q. What about the currency and the packaging materials  
10 that were recovered, do those factor into your opinion?

11 A. Yes, they do.

12 MS. YOUNG: Objection. Compound and vague.

13 THE COURT: Objection to compound sustained.

14 Q. MS. BUITRAGO: Sergeant Murphy, there was 1,300 or,  
15 excuse me, \$1,336 seized from the defendant. Is that part of  
16 your opinion?

17 A. It is.

18 Q. What about packaging materials recovered from the  
19 Volvo?

20 A. There was packaging material recovered from the Volvo  
21 as well as Mr. Williams' pockets. I believe both of those  
22 also contributed to the factor of him possessing these  
23 narcotics for sales.

24 Q. What about the location here, was that a factor?

25 A. Yes.

26 MS. BUITRAGO: Thank you. I have no further  
27 questions of this witness.

28 THE COURT: Okay. Any cross-examination, Ms.

1 Young?

2 MS. YOUNG: Yeah.

3 CROSS-EXAMINATION

4 BY MS. YOUNG:

5 Q. Good afternoon, Sergeant Murphy.

6 A. Hi.

7 Q. So I think on direct examination you said that it was  
8 approximately 7:15 or so in the morning?

9 A. Yes.

10 Q. Right. And was it light out?

11 A. It was.

12 Q. And the street that you actually saw Mr. Williams  
13 standing on was on Turk; is that right?

14 A. No.

15 Q. On Leavenworth?

16 A. Yes.

17 Q. And so Leavenworth runs parallel to Hyde?

18 A. It does.

19 Q. And Leavenworth intersects Turk?

20 A. It does.

21 Q. And Turk Street is a one-way street going in the  
22 westerly direction at this location, correct?

23 A. Yes.

24 Q. And this is -- do you recall what day of the week it  
25 was?

26 A. I do not.

27 Q. Do you know if it was a weekday or a weekend?

28 A. I do not recall what day of the week it was.

1 Q. If it was a weekday, this would be a commute hour;  
2 agreed?

3 A. Yes.

4 Q. So prior to seeing Mr. Williams, you indicated that  
5 you saw him for the first time from approximately a half a  
6 block away, correct?

7 A. Correct.

8 Q. Okay. And so that would mean before you were at the  
9 light on Leavenworth?

10 A. Correct.

11 Q. Okay. And --

12 A. Well, which light?

13 Q. Well, there is the light at the intersection of  
14 Leavenworth and Turk, right?

15 A. Correct.

16 Q. Okay. And you are driving on Leavenworth, correct?

17 A. Yes.

18 Q. And you are going in a northbound direction?

19 A. Yes.

20 Q. On Leavenworth. Okay. So before you get to Turk  
21 Street, there is a light that controls that intersection. Do  
22 you agree with that?

23 A. Yes.

24 Q. Okay. So you notice Mr. Williams before you get to  
25 the light; is that right?

26 A. Yes.

27 Q. Okay. And prior to seeing Mr. Williams, you had not  
28 received any kind of anonymous tip that you say a black male



1 was selling drugs in this location, correct?

2 A. Correct.

3 Q. Okay. And prior to pulling up next to Mr. Williams  
4 and asking him what he was doing, you had not seen him engage  
5 in any kind of transaction with anyone, correct?

6 A. What was the first part of that question?

7 Q. Prior to pulling up next to Mr. Williams and asking  
8 him what he was doing or how his morning was going --

9 A. Uh-hum.

10 Q. -- you had not seen him engage in any transaction with  
11 another person, correct?

12 A. That is correct.

13 Q. So for the half a block that you are approaching him  
14 and pulling up to him, you do not see Mr. Williams doing  
15 anything other than standing there, correct?

16 A. Correct.

17 Q. And the Volvo was legally parked?

18 A. It was parked. I'm not sure if the meter was expired  
19 or not, but other than that it would have been legally  
20 parked.

21 Q. And was there anyone inside the Volvo?

22 A. No.

23 Q. There were other people on the street, though?

24 A. On the sidewalk.

25 Q. On the sidewalk?

26 A. Yes.

27 Q. Okay. And you didn't notice anything unusual about  
28 his demeanor as you pulled up next to him, correct?

1 A. Well, I would argue what unusual is or usual.

2 Q. I'm not trying to argue. Okay. Let me just --

3 A. I would discuss it with you.

4 Q. Okay. Can I ask you, did you state under direct  
5 examination when the district attorney asked can you describe  
6 his demeanor, you said, quote, there was nothing unusual  
7 about his demeanor?

8 A. Other than he was standing at that location which is  
9 indicative for me to a lot of things.

10 Q. Okay. So the fact of a black man standing on  
11 Leavenworth at Turk is something that indicates to you  
12 criminal activity?

13 MS. BUITRAGO: Your Honor, argumentative.

14 THE COURT: Overruled.

15 THE WITNESS: I don't know why you bring up the  
16 black, but a man standing there would indicate something to  
17 me, hanging out by the car.

18 Q. MS. YOUNG: Okay. So the fact that he was a man is  
19 more important to you than the fact that he's a black man?

20 A. Correct.

21 Q. Okay. So, for instance, a Vietnamese man standing at  
22 the rear of the Volvo, a legally parked Volvo, would carry  
23 for you the same amount of suspicion as Mr. Williams'  
24 presence on the street that morning?

25 A. It would cause me concern as to what he was doing  
26 there hanging out. Whether he was white, black, Latin,  
27 Vietnamese, it would all cause questions and concerns,  
28 because people in my opinion who hang out at that location

1 are either seeking narcotics or dealing narcotics. People  
2 don't just hang at that corner. It's a dangerous corner if  
3 you're not in the drug trade.

4 Q. Okay. And this is a presumption that you carry with  
5 you every time you drive down Leavenworth Street near the  
6 Turk intersection?

7 A. Yes. Yes, it is.

8 Q. All right. So any male hanging out in that area doing  
9 nothing but standing there is possibly engaged in narcotics  
10 transactions?

11 A. It would be male, female, yes.

12 Q. Okay. So women as well?

13 A. Yes.

14 Q. Okay. So, for example, if I was standing there doing  
15 absolutely nothing at the rear of the Volvo and just standing  
16 there --

17 A. He wasn't at the rear of the Volvo.

18 Q. Okay. Standing within a foot I think you said of the  
19 Volvo?

20 A. Right. Next to an open window and an open sunroof.

21 Q. Okay. And the open -- having an open car window is  
22 another suspicious factor for you?

23 A. It does. It plays into the totality of everything.

24 Q. Okay. Now, you didn't see Mr. Williams look in any  
25 direction until you started to slow your SUV and pull up next  
26 to him, correct?

27 A. He was very aware. He was looking up and down the  
28 street. He was very aware of his surroundings.

1 Q. So I think what you stated under direct examination  
2 was that you pulled -- that he did not start looking up and  
3 down the street until you started pulling up toward him. Do  
4 you recall that testimony on direct examination?

5 A. I recall that testimony, but he started looking more  
6 so up and down the street, but he was looking up and down the  
7 street when I was rolling towards him.

8 Q. Okay. So earlier you testified that he wasn't looking  
9 up and down the street until you started to pull up next to  
10 him?

11 A. I don't believe I testified to that.

12 Q. Okay. So is it now your testimony that he was looking  
13 up and down the street the whole time, but doing it more when  
14 you pulled up next to him?

15 A. More so when I started questioning him as to what he  
16 was doing out there, as I stated earlier.

17 Q. Okay. So when you pull up next to him and you say,  
18 how is your morning going --

19 A. Yes.

20 Q. -- in a very pleasant tone of voice --

21 A. Yes.

22 Q. -- at that point you had not observed Mr. Williams  
23 engaged in any illegal activity; true?

24 A. Yes. I stated that before, had not seen him conduct  
25 any sales. I had not seen any other illegal activity,  
26 correct.

27 Q. And when you asked him, how is your morning going, you  
28 stated there was nothing unusual about his demeanor?

1 A. Correct.

2 Q. True?

3 A. Correct.

4 Q. And he said, It's going fine?

5 A. He said, good.

6 Q. Good. And then you asked him what he was doing,

7 correct?

8 A. Yes, something to that effect.

9 Q. And you testified that his response to you was, just

10 hanging out?

11 A. Correct.

12 Q. Okay. Now, is it illegal for Mr. Williams to be just

13 hanging out next to a Volvo with an open window and an open

14 sunroof at 7:15 in the morning?

15 A. It can be very illegal.

16 Q. But that in and of itself is illegal?

17 A. It can be, yes.

18 Q. Okay. And is your perception of it that he was at

19 that point engaging in illegal activity?

20 A. It was not my perception at that point.

21 Q. Okay. And at that point Mr. Williams, after he said,

22 I'm hanging out, could have walked away from you, correct?


23 A. Correct.

24 Q. Okay. And you remained in your driver's seat,

25 correct?

26 A. Yes.

27 Q. All right. And then after he said, Well, I'm going to

28 be here for about 45 minutes, okay, that peeked your 

1 curiosity?

2 A. It did.

3 Q. Okay. And you did not know Mr. Williams prior to this  
4 morning, correct?

5 A. Correct.

6 Q. You had never seen him before, correct?

7 A. I may have and I may have talked to him prior, but if  
8 I have, I don't remember.

9 Q. You didn't know if he lived there or not?

10 A. Correct.

11 Q. Are you aware that across the street from where you  
12 detained Mr. Williams, there is a self-help center?

13 A. Yes, at 290 Turk Street. I'm aware of that.

14 Q. Okay. And are you aware that people get mail there?

15 A. I am.

16 Q. And that people can spend the night there if they need  
17 a room?

18 A. I'm not sure on that.

19 Q. Okay. And on the corner is a market, correct?

20 A. Yes.

21 Q. And it's a market for all kinds of things, not just  
22 liquor, correct?

23 A. There is numerous markets right there, yes.

24 Q. But, I mean, we're talking about that southwest  
25 corner.

26 A. Yes.

27 Q. Okay. And after he told you he wasn't on parole, you  
28 followed up and said, well, are you on probation, correct?

1       A.       Correct. But going back to your 290 Turk, I had asked  
2       him if he lived in the area or if he lived on Turk.

3       Q.       You can answer -- you can explain all of that on  
4       redirect.

5       A.       Okay.

6       Q.       Yeah.

7       A.       I thought you were --

8       Q.       We have that under direct. He said, I live around?

9       A.       Yes.

10      Q.       Okay. There is no requirement that a person who you  
11      are engaging in a consensual encounter with must give you his  
12      or her address, is there?

13               MS. BUITRAGO: Objection. Calls for a legal  
14      conclusion.

15               MS. YOUNG: This is her training. She's a trained  
16      police officer.

17               THE COURT: Sustained. It does call for a legal  
18      conclusion.

19      Q.       MS. YOUNG: It is not illegal for a person to refuse  
20      to give you his or her address?

21               MS. BUITRAGO: Objection. Calls for a legal  
22      conclusion.

23               THE COURT: Sustained.

24      Q.       MS. YOUNG: Mr. Williams turned around and started to  
25      walk away from you at one point, correct?

26      A.       Yes.

27      Q.       Okay. And at the point that he was turning around and  
28      walking away from you, you had not observed him engage in any

1 illegal activity, correct?

2 A. Correct.

3 Q. And as he continued to walk away from you, you decided  
4 you wanted to detain him, correct?

5 A. Yes.

6 Q. Okay. And that's why you backed your car up, because  
7 you were planning to get out of your car, correct?

8 A. Correct.

9 Q. And you did not want your car door to hit the Volvo?

10 A. That was part of it.

11 Q. Okay. And so when you stepped out of your car, you  
12 were going to detain Mr. Williams?

13 A. Correct.

14 Q. He was not running away from you, correct?

15 A. Correct.

16 Q. He was walking away from you, correct?

17 A. He wasn't like actively quickly walking away. He was  
18 kind of turned around and was moseying, like towards the  
19 building line. So he hadn't committed to a north or south  
20 direction. He was walking away, but he wasn't, like, walking  
21 away to go away, if that makes sense.

22 Q. It doesn't. Let me ask some more questions.

23 THE COURT: Well, the questions need to make sense  
24 to me. Go ahead.

25 Q. MS. YOUNG: Okay. So he turned away from you. Let's  
26 take it step-by-step. Correct?

27 A. Yes.

28 Q. And he was taking steps away from your direction,



1 correct?

2 A. Yes.

3 Q. Okay. And it's at that point that you decide to put  
4 your SUV in reverse, because you want to detain him now?

5 A. Yes.

6 Q. Okay. And as you get out of your car and start to  
7 move towards Mr. Williams, his back is to you, correct?

8 A. His back and the majority of his right side. I can  
9 see some of his left side.

10 Q. Okay. And it's your opinion that based on the  
11 totality of the circumstances up to that point, you had a  
12 reasonable suspicion to detain Mr. Williams and question him  
13 further, correct?

14 A. At which point?

15 Q. When you were starting to walk toward him and said,  
16 hey, wait a minute.

17 A. I didn't --

18 Q. Or come back here. I think your police report says --  
19 let me get your exact words from your police report.

20 MS. YOUNG: May I just have one second?

21 THE COURT: Yes.

22 Q. MS. YOUNG: You did write the police report in this  
23 case; am I right?

24 A. Yes, ma'am.

25 Q. Okay. And I'm sure you're more familiar with this  
26 report than I am. You reviewed the report prior to coming  
27 today, right?

28 A. Yes.

1 Q. Okay. And you reviewed it for accuracy and  
2 thoroughness?

3 A. I did.

4 Q. Yes?

5 A. Yes.

6 Q. Okay. So when you are approaching Mr. Williams, his  
7 direction is away from you. His movement of direction is  
8 away from you, where you are, correct?

9 A. At what point?

10 Q. When you're first getting out of your car and walking  
11 toward him.

12 A. Yes.

13 Q. Okay. And then at some point you're on the sidewalk,  
14 correct?

15 A. Yes.

16 Q. Okay. And as he's walking away from you, you don't  
17 see the front of his body, but you see his right arm move  
18 across the front of his body?

19 A. Correct.

20 Q. Okay. So in other words, he's walking away from you  
21 and from the back you see his right arm move as if it's  
22 moving in front of his own body?

23 A. This is when I'm getting out of my police vehicle. So  
24 I have reversed my police vehicle. So I'm backing up. He's  
25 kind of shuffling towards the building line. And as I'm  
26 backing up, it gives me a better view of his body, not just  
27 from behind. So when I get out of my car and I'm walking  
28 around the back side of the Volvo onto the sidewalk, I have a

1 partial view of his left side.

2 Q. Okay. And again, just to be absolutely clear, okay,  
3 it was your intention at that point when you were getting out  
4 of your SUV to detain Mr. Williams?

5 A. It was my intention to get out and talk to him  
6 further, yes.

7 Q. Okay. You just told us it was your intention to  
8 detain him, and you stated that under direct examination.  
9 You didn't want him to run away, correct?

10 A. I did not want him to run way, correct.

11 Q. Okay. And as he continued to walk away from you,  
12 whether it was with his full back towards you or a partial of  
13 his back towards you, he is moving away from your direction,  
14 correct?

15 A. At parts of -- yes. At part of it, yes.

16 Q. Okay.

17 A. Not the entire time, though.

18 Q. Okay. And so you -- how far is he away from you when  
19 you are now on the sidewalk?

20 A. Six feet or less.

21 Q. Okay. And by the time that you come up behind him, as  
22 you're getting out of your car and walking toward him to  
23 detain him, you have not seen him commit a crime, correct?

24 A. Well, he had placed something in his mouth. I believe  
25 that that was a crime. Are we prior to that or no?

26 Q. Okay. So let's cover placing something in the mouth.

27 A. Sure.

28 Q. So prior -- let's talk about, first of all, prior to

1 getting out of your SUV. Prior to getting out of your SUV,  
2 Mr. Williams had not committed a crime, correct?

3 MS. BUITRAGO: Objection. Asked and answered.

4 THE COURT: Sustained. Let me stop you here, Ms.  
5 Young. Let me hear argument on the motion to suppress, Ms.  
6 Buitrago.

7 MS. BUITRAGO: Your Honor, I think at this point  
8 the People have demonstrated that this contact and subsequent  
9 detention was lawful. I have outlined it in my moving  
10 papers. I think at first we see the officers have a  
11 consensual encounter with the defendant, asking him what he  
12 was doing, how long he intended to be there for, all of the  
13 relevant facts at present in the record that no force was  
14 used, the tone of voice was pleasant, the vehicle the  
15 officers were in did not impede the defendant's path of  
16 travel and the defendant was free to leave.

17 At that point Sergeant Murphy asked the defendant  
18 whether or not he was on probation or parole, and that was in  
19 light of the fact that he had stated that -- or he didn't  
20 state it. He was kind of evasive in his response to where he  
21 lived, and he stated he was going to be in that area for 45  
22 minutes. I think given the fact that this is known as Pill  
23 Hill, it's 7:18 in the morning when most people are going to  
24 go about their business of the day or explain what their  
25 errands are maybe in that area, he's hanging out on a corner  
26 in a high narcotics sales area and he says he's going to do  
27 it for 45 minutes. So that in and of itself gives them  
28 reasonable suspicion to detain him for loitering.

1 But it goes on. The officer asks whether or not he's on  
2 probation or parole and he becomes evasive. He doesn't  
3 answer the first time around. The second time she asks him,  
4 he only responds halfway saying, I'm not on parole. At that  
5 point it gives her further suspicion that perhaps he's on  
6 probation because any reasonable person would respond by  
7 saying, no, I'm not on either. At that point the officers  
8 attempt to exit their vehicle. When they do so, she sees  
9 furtive movements by the defendant, such as reaching over,  
10 putting his hand in his pocket. She asks him to remove his  
11 hand from his pocket and he places the substance in his  
12 mouth.

13 I think at that point the officers create a detention.  
14 At the point that they physically see the items in the mouth,  
15 and they go to handcuff him, he's detained. But they have  
16 reasonable suspicion to detain him based on the totality,  
17 based on the potential for loitering, based on the potential  
18 that he was going to commit a PC 135 by destroying or  
19 concealing evidence, and then based on his subsequent conduct  
20 which amounts to a 148. I don't think by placing Mr.  
21 Williams in handcuffs that elevated it to a de facto arrest.  
22 I do think the detention was supported by a reasonable  
23 suspicion.

24 And in addition to my moving papers, I've relied upon  
25 People v. Johnson. That was previously provided to the  
26 Court. The citation for that is 231 Cal., App., 3d, 1. It's  
27 the page number there. And that discusses, you know, the use  
28 of force and the escalation, what amounts to reasonable

1       suspicion. And I think based on the facts here, we have all  
2       of those factors.

3               THE COURT: Okay. The motion to suppress evidence  
4       is granted. I believe that Sergeant Murphy was clearly  
5       correct in her suspicion. I don't think that it has risen to  
6       reasonable suspicion at the time that the contact was made.  
7       I do believe that Mr. Williams put himself in a more  
8       precarious position by engaging with the officer and  
9       answering half questions, but I don't think it rose to the  
10      level required for a lawful detention at that moment in time.  
11      So for that reason, the motion to suppress is granted. That  
12      takes care of count numbers 1 through 4.

13             As to No. 5, also, destroying evidence, that would also  
14      eliminate the need for that count as well. The refusal to  
15      spit, which is the basis for the 148 in Count 6 is also based  
16      on the same conduct and at this point in time I've heard  
17      testimony about what Mr. Williams was doing to support Count  
18      7. And with respect to Count 7 -- one second.

19             MS. BUITRAGO: Your Honor, if I can ask the Court  
20      to elaborate at what point --

21             THE COURT: One second.

22             MS. BUITRAGO: Sure.

23             THE COURT: Okay. Count 7 can also not be  
24      supported by the evidence that was available up until the  
25      time of the detention.

26             Ms. Buitrago, you had a question?

27             MS. BUITRAGO: Sure. I just would like the Court  
28      to clarify for my own edification at what point the Court

1 believes that this detention became unlawful, because at the  
2 point where Mr. Williams put the substance in his mouth,  
3 there was no detention, right? I mean, no physical force or  
4 issuance of commands had been raised.

5 THE COURT: Well, there was a command. The command  
6 was take your hands out of your pockets when someone was  
7 clearly trying to avoid the officer. So it was at that point  
8 in time that I think that Mr. Williams still had the legal  
9 right to walk away from the officer, and I don't believe that  
10 -- you know, I think, you know, that we see all kinds of  
11 cases where, you know, officers say things like, oh, so  
12 you're just going to walk away from me? Like, you know, I'm  
13 just trying to talk to you and, essentially, you know, reel  
14 people back in to a continuous conversation.

15 That is not what happened here. You know, there's  
16 nothing malicious that happened here or any bad faith on  
17 behalf of the officer. Again, I think that Sergeant Murphy  
18 was correct in what she believed. This is a very difficult  
19 neighborhood to work in. Nonetheless, I think this happened  
20 a little bit too soon. So for that reason, I believe that  
21 all counts have to be dismissed because there would not be  
22 anything to support any event without the evidence that's  
23 been excluded by my ruling.

24 MS. BUITRAGO: Is the Court taking the opinion that  
25 an individual who was on probation does not have an  
26 obligation when asked directly to respond to the question  
27 whether or not he's on probation? Because I believe that  
28 that's lawful. If someone is on probation, for public policy

1 reasons, when asked -- and I put that in my moving papers.  
2 When asked, are you on probation or parole, a probationer is  
3 required to state that. Otherwise, any time someone who is  
4 on probation is contacted by police, they can choose to end  
5 a, quote, consensual encounter by walking away and then a  
6 1035 clause or a search clause becomes, you know, meaningless  
7 because they can't effectuate the search because they can't  
8 detain the person.

9 THE COURT: You bring up a very interesting point,  
10 Ms. Buitrago. I understand the logic behind the public  
11 policy. I'm precluded by law from stating what I believe  
12 policy should be, right? I'm a judge. I don't dictate  
13 policy. I will say that in other counties it is a mandatory  
14 term of probation that people have to admit that they are on  
15 probation, that they are on search conditions in order for  
16 them to get the benefit of being on that type of probation.  
17 We all know in this room right now that that is not the  
18 policy. That's not a standard term in San Francisco. So I'm  
19 not -- that's not going to be enough to save this case.

20 MS. BUITRAGO: Would the Court be willing to  
21 reserve its ruling? I understand the ruling, but I feel like  
22 there is authority that says someone who is on probation has  
23 an obligation to state that and if the People were able to  
24 provide that case law and that authority -- I mean, I took it  
25 to just be a known fact, and that's my mistake. But, I mean,  
26 it's a very well-known good law that if someone is on  
27 probation and they are asked, they have an obligation to  
28 state they are on probation.



1           THE COURT: Okay. I will allow you time to brief  
2 that and I will reserve my final ruling to allow you to do  
3 that. I think that I would give that opportunity to anyone  
4 who wanted the opportunity to provide authority to show me  
5 that I'm wrong before I fully commit to it. So without  
6 making any promises at this point in time, I am willing to  
7 allow that, that time. And how much time do you need to  
8 provide that?

9           MS. YOUNG: Judge, may I respond first?

10          THE COURT: Go ahead.

11          MS. YOUNG: Okay. First of all, I think it's a  
12 mischaracterization of the officer's testimony both on direct  
13 and cross.

14          THE COURT: We're not going to argue the merits of  
15 that, Ms. Young, because, you know what, right now your  
16 client is in the winning position, okay, and I'm going to ask  
17 him to take a bifurcation. I got other stuff to do today. I  
18 want to address this issue today. I have already stated  
19 clearly what I believe, you know, is the state of the law  
20 with respect to this. Ms. Buitrago is telling me I'm wrong  
21 on the law. It is only right that I give her an opportunity  
22 to look into this. But before we argue about it, let me just  
23 hear what she has to present to the Court. Okay?

24          MS. YOUNG: Okay. It's just that I think -- may I  
25 have a transcript prepared for this?

26          THE COURT: What's that?

27          MS. YOUNG: I would like a transcript prepared thus  
28 far because --

1 THE COURT: We're not done. We're going to pass  
2 this matter for a second.

3 MS. YOUNG: Oh, I thought you were putting it over  
4 for two weeks or something.

5 THE COURT: No, no, no. Absolutely not.

6 MS. BUITRAGO: Well, I was going to ask for at  
7 least until Monday because, I mean, I'm only going to be here  
8 until 4:30, and I don't understand when I'm supposed to do  
9 the research.

10 THE COURT: No, we'll pass this matter.

11 MS. YOUNG: No, you can't put it over till Monday.

12 THE COURT: We're going to pass this matter right  
13 now. Okay. Mr. Williams, I'll come back to your case today.  
14 I'm going to allow for a bifurcate and take some other  
15 matters. We'll take a break. Ms. Buitrago, you provide what  
16 you can today. Mr. Williams is in custody. I didn't make a  
17 decision today.

18 MS. BUITRAGO: Mr. Williams is also in custody on  
19 his motion to revoke, Your Honor.

20 THE COURT: I understand. It's not before me  
21 today. Sergeant Murphy, I'm going to ask you to please stay  
22 here until we're done with the case.

23 THE WITNESS: Yes.

24 THE COURT: Okay. So you're excused from the  
25 witness stand right now, and we'll pass this matter. Okay?  
26 Thank you.

27 Mr. Williams, I need to hear from you personally.  
28 Are you giving me a bifurcation so I can take other matters

1 while I return to your case?

2 MS. YOUNG: A bifurcation means a break in the  
3 prelim. He'll hear other matters and come back to your case.

4 THE DEFENDANT: Yeah, yeah, yeah.

5 THE COURT: Yes?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. Thank you.

8 (The matter was passed.)

9 THE COURT: Back on the record in the matter of  
10 People versus Willie Williams at lines 14 and 15.

11 Ms. Buitrago, did you have a chance to find out  
12 some other authority?

13 MS. BUITRAGO: It appears that the Court gave me  
14 less than a half an hour. I did ask for, you know, a  
15 bifurcation until at least the next business day given the  
16 fact that it's three o'clock now. I understand that the  
17 Court, you know, has a schedule to manage, and I have my  
18 duties here as the deputy of the day in this department.

19 Again, I renew my request to at least to have until  
20 tomorrow if not until Monday. Nevertheless, I understand the  
21 Court's ruling, but I'd at least like to make it clear for  
22 the record that I did ask for additional time to brief the  
23 issue, specifically because I asked Ms. Young the scope of  
24 the motion and the beginning and this issue about the  
25 probation and status wasn't quite discussed.

26 THE COURT: Okay. Do you want until 4:30? Is  
27 there someone in your research department that could look at  
28 the issue? I just don't want to take it beyond today. So I

1 understand you couldn't find someone to cover the  
2 arraignments and we have another preliminary hearing. I just  
3 don't know if you can email or text someone to look into that  
4 other matter. I did some quick research. I didn't find  
5 anything that would be in your favor, Ms. Buitrago.

6 MS. BUITRAGO: I think the research that I will  
7 need would have to come from Mr. Williams' actual probation  
8 officer to see if those terms were explained to him during  
9 their initial intake interview which is why I think it's not  
10 something that can just happen on a computer.

11 THE COURT: Okay. That being the case then, again,  
12 I fall back on practicing law and being in San Francisco for  
13 the last 14 years. It's not something that any judge  
14 typically orders someone that you have to, at the condition  
15 of probation, identify yourself as being on probation with a  
16 search condition when asked. Again, that is common in other  
17 counties. It's not common in this county.

18 I also looked at the Johnson case referenced earlier.  
19 That case is distinguishable because in that case the  
20 officers had an anonymous tip about drug dealing, and they  
21 went and found the defendant at the same location of the  
22 anonymous tip of drug dealing and it was at that point in  
23 time that the cases would be similar. The period of actions,  
24 you know, the actions by the defendant in that situation  
25 might parallel the actions by Mr. Williams in this case. But  
26 again, the anonymous tip and description, the same building,  
27 all of those things we're missing.

28 Here we have Mr. Williams in front of a legally parked

1 vehicle stating that he is going to be there for the next 45  
2 minutes, and I think to myself, well, I could be waiting for  
3 someone. I could be standing outside a place in front of my  
4 vehicle. So there was definitely things that followed that  
5 were suspicious, but for the purpose of this hearing and that  
6 initial detention, my ruling that I stated that I was  
7 inclined to do earlier will now stand. And based on the  
8 motion to suppress, there is insufficient evidence to support  
9 Counts 1 through 7, and those counts are dismissed.

10 Mr. Williams, you still have the mandatory supervision  
11 matter that appears in line 14. You're being held without  
12 bail on that case, and you're ordered to appear in Department  
13 22 to set the motion to revoke on that matter on Monday,  
14 December 7, 2015 at 9:00 a.m.

15 MS. YOUNG: Your Honor, there is no way it can be  
16 tomorrow.

17 THE COURT: Actually, there is the options of  
18 Monday and Tuesday. So I'll pick the earliest day for Mr.  
19 Williams.

20 MS. YOUNG: All right.

21 THE COURT: Okay. That concludes this matter.  
22 Thank you.

23 MS. BUITRAGO: Your Honor, when will the exhibits  
24 be returned to the People?

25 THE COURT: Yes, back on the record. All the  
26 exhibits are returned to the People.

27 MS. BUITRAGO: Thank you.

28 THE COURT: Actually, they hadn't even been

1 admitted yet. We hadn't formally done it.

2 All right. Thank you.

3 (Matter adjourned.)

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